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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,408	04/01/2004	Patricia L. Gardner	02-014-01 (IDRF118)	7986

7590 10/07/2005
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EXAMINER

EDELL, JOSEPH F

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/815,408	Applicant(s) GARDNER ET AL.	
	Examiner Joseph F. Edell	Art Unit 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2005.
2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-11 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Objections

1. Claim 10 is objected to because of the following informalities: "characterized by" (lines 2 and 4) should read --wherein--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,329,934 to Bowman.

Bowman discloses an infant holder that includes all the limitations recited in claims 1-4. Bowman shows an infant holder having a body with a recess (Figs. 1 and 2) configured to support an infant's torso and legs such that the thighs extend out from the torso at an angle of about 90° (see Fig. 1) and incline relative to the torso at an angle of about 30° (see Fig. 2), and the calves extend out from the thighs at an angle of about 90° (see Fig. 1) and decline relative to the thighs at an angle of about 10° (see Fig. 2).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bowman in view of U.S. Patent No. 2,700,381 to Powell.

Bowman discloses an infant holder that is basically the same as that recited in claims 5-11 except that the holder lacks first and second recesses, as recited in the claims. See Figure 2 of Bowman for the teaching that the infant holder has a first recess configured to support the infant's torso wherein the recess inclines at an angle of about 10° from a lower portion to an upper portion. Powell shows an infant holder similar to that of Bowman wherein the infant holder has a body (Fig. 1) with a first torso recess 2 (Fig. 1) including a base and sidewalls to support an infant's torso as well as second leg recesses 3 (Fig. 1) that each include a base and sidewalls configured to support the infant's legs such that the leg recesses are positioned opposite one another on either side of a lower portion of the torso recess and each having a first thigh portion and a second calf portion. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the infant holder of Bowman such that the torso recess includes a base and sidewalls to support the torso as well as second leg recesses that each include a base and sidewalls configured to support the legs wherein the leg recesses are positioned opposite one another on either side of the lower portion of the torso recess and each leg recess including a first thigh portion and a second calf portion such that a centerline of the base of the thigh portion intersects a longitudinal axis extending lengthwise along the torso recess at an angle of

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about 90° and inclines relative to the base of the torso recess at an angle of about 30°, and the calf portion of each leg recess extends away from the thigh portion such that a centerline of the base of the calf portion intersects the centerline of the base of the thigh portion at an angle of about 90° and declines relative to the base of the thigh portion at an angle of about 10°, such as the infant holder disclosed in Powell. One would have been motivated to make such a modification in view of the suggestion in Powell that the recessed torso portion and leg portions provides a cushioned surgical support capable of retaining a fluid-absorbent lining, as well as the suggestion in Bowman that the specific angular configuration of the infant's torso and legs secure the patient in a spread-eagle position to provide adequate surgical access.

Response to Arguments

6. Applicant's arguments filed 06 July 2005 have been fully considered but they are not persuasive. Applicant argues that the infant holder of Bowman fails to teach the recess recited in claim 1. Initially, Examiner reasonably interprets a recess as an indentation or cleft, as defined in *Merriam-Webster's Collegiate Dictionary, Tenth Edition*. Bowman shows a body 20 with a recess between the support block 50 and the head cushion 60. Also, the body has a pad 40 having recesses therein. See Diagram A below. In Applicant's Remarks, there are no arguments regarding the recess between the support block and head cushion. Although, Applicant does argue that, even if the infant holder of Bowman is interpreted to have a recess, the recess is not configured to support an infant's legs. However, Figure 2 of Bowman shows that the

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support block 50 actually contacts the infant's legs and, therefore, is configured to support an infant's leg. Overall, the limitation of claim 1 reciting a recess configured to support an infant's torso and legs is intended use language that does not result in a structural difference between the claimed invention and the prior art. A structural difference is necessary to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Clearly, the recess of the infant holder shown in Bowman is capable of performing the intended use, as typified by Figure 2. Lastly, Applicant argues that Figure 1 of Bowman fails to show an inclining torso support, as recited in claim 7 and 11. However, the previous Office Action does not make any reference to Figure 1 to teach an inclining torso support. See the above rejection regarding claims 5-11.

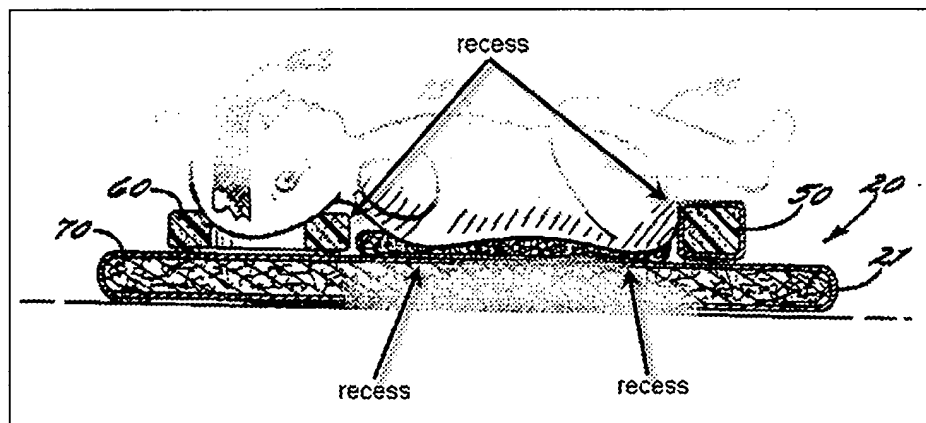


Diagram A - Annotated Figure 2 of Bowman

The rejection under 35 USC 103(a) drawn toward claims 5, 6, and 10 was argued solely on the premise that the cited art does not teach or suggest the infant holder

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defined in amended claims 1-4, and as a result the above 35 USC 103(a) rejection of claims 5, 6, and 10 remains.

Upon consideration of the Applicant's arguments, Examiner maintains the rejections of claims 1-11.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (571) 272-6858. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).



JE
October 3, 2005



Peter M. Cuomo
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